

# CRS Report for Congress

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## **S. 625, The Bankruptcy Reform Act, in the Senate: Selected Amendments**

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### **Summary**

On November 4, 1999, shortly before adjournment of the first session of the 106<sup>th</sup> Congress, S. 625, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999), the Bankruptcy Reform Act, was brought to the floor of the Senate for consideration. More than 300 germane and nongermane amendments were offered. This report surveys selected amendments to the bill which were passed prior to adjournment. Consideration of S. 625 is likely to be resumed by the Senate in the second session of the 106<sup>th</sup> Congress.

On May 5, 1999, the House passed its version of bankruptcy reform, H.R. 833, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999), by a vote of 313-108.

On November 4, 1999, the Senate brought its bill, S. 625, to the floor. More than 300 germane and nongermane amendments were offered. Prior to bringing the bill to the floor, the Senate defeated a cloture motion to limit debate.<sup>1</sup>

Many amendments, including a modified manager's amendment,<sup>2</sup> were passed. Others failed or were tabled. Among the nongermane amendments that passed was one which increased the federal minimum wage and amended provisions in the Internal Revenue Code dealing with small business taxes, long term health care insurance, and pensions.<sup>3</sup> Another nongermane amendment, entitled the "Methamphetamine Anti-Proliferation Act," involves criminal enforcement of drug laws.<sup>4</sup>

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<sup>1</sup> 145 Cong Rec. S11096 (daily edition Nov. 4, 1999).

<sup>2</sup> S.Amdt. 2515, 145 Cong. Rec. S14490 (daily edition Nov. 10, 1999).

<sup>3</sup> S.Amdt. 2547, id. at S14129 (daily edition Nov. 5, 1999).

<sup>4</sup> S.Amdt. 2771, id. at S14193.

Two controversial amendments, requiring respectively nondischargeability of liability for gun-related claims against gun manufacturers,<sup>5</sup> and nondischargeable liability for abortion clinic violence claims,<sup>6</sup> were *not* brought up prior to adjournment. Although Majority Leader Lott had filed a cloture motion to limit further debate, with a vote initially scheduled for Tuesday, January 25, 2000,<sup>7</sup> Senate leadership was able to work out an agreement and the Senate is now poised to resume debate and vote on the bill during the week of February 1, 2000.

Several of the amendments to S. 625 accepted by the Senate prior to adjournment appear to be duplicative, and in the case of provisions to increase bankruptcy filing fees, possibly unnecessary. If the Senate passes the bill, there will still be a significant variance between its and the House's version of bankruptcy reform that will need to be addressed in a conference.

Selected amendments that passed prior to adjournment are surveyed below:

- *Managers' amendment.* Extensive provisions designated as “technical and conforming” are encompassed in the managers’ amendment to S. 625.<sup>8</sup> These include provisions: incorporating a “safe harbor” in the means test for a debtor earning less than the national or state median household monthly income; directing the Executive Office of the U.S. Trustee (EOUST) to evaluate and report on the Internal Revenue Service (IRS) living standards; adding new criteria for nonprofit budget and credit counseling agencies; addressing the treatment of domestic support obligations in chapters 11 and 12; excluding from a debtor’s estate of specified funds placed in an education individual retirement account or used to purchase a tuition credit or certificate; addressing individual filings under chapter 11; amending chapter 12 to include family fishermen, as defined; and, amending the definition of a chapter 11 “small business debtor” to one who owes no more than \$3,000,000 rather than \$4,000,000 in indebtedness.
- *Federal cap on homestead exemption.* S. 625 as reported by the Senate Judiciary Committee did *not* impose a cap on homestead exemptions in opt-out states.<sup>9</sup> The Senate passed an amendment which imposes a \$100,000 cap on state homestead exemptions;<sup>10</sup> it rejected amendments to permit states to opt-out of the cap.

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<sup>5</sup> S.Amdt. 2658, id. at S14160.

<sup>6</sup> S.Amdt. 2763, id. at S14191.

<sup>7</sup> 145 Cong. Rec. S15060 (daily edition Nov. 19, 1999).

<sup>8</sup> S.Amdt. 2515 as modified, supra note 2.

<sup>9</sup> For a brief survey comparison of the consumer provisions of S. 625 as reported by the Senate Judiciary Committee and originally brought to the floor with H.R. 833, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess., the Bankruptcy Reform bill passed by the House, see CRS Report RS20196 (Aug. 9, 1999).

<sup>10</sup> S.Amdt. 2516, 145 Cong. Rec. S14481 (daily edition, Nov. 10, 1999).

- *Adjustments to the means test, authorized living expenses, and the debtor's estate.* The means test would be liberalized to create a “safe harbor” and permit a trustee to decline to challenge a debtor for abusing the Code if the debtor’s monthly income exceeds 100% but does not exceed 150% of the national or state median household income.<sup>11</sup> Several amendments effected changes that identify specific items that must be factored into the means test or permitted as living expenses. For example, monthly expenses are amended to include: actual expenses paid by the debtor for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor’s immediate family who is not a dependent;<sup>12</sup> and, those incurred to maintain the safety of the debtor and the debtor’s family from family violence as defined under federal law.<sup>13</sup> The debtor’s estate is amended to exclude employer and employee contributions to specified retirement and health insurance plans.<sup>14</sup> And debtors who are homeowners may include the cost of utilities, maintenance, repair, and homeowner’s insurance and property tax in living expenses.<sup>15</sup> The Executive Office for the U.S. Trustees is charged with developing appropriate bankruptcy-related living standards within one year.<sup>16</sup>
- *Jurisdictional pre-filing requirements.* Debtors would not be subject to a mandatory requirement to produce tax returns in the bankruptcy case, but would be required to do so pursuant to an authorized request from a party in interest.<sup>17</sup> Mandatory pre-filing credit counseling could take place telephonically or on the Internet.<sup>18</sup>
- *Attorney sanction.* A debtor’s attorney will be required to reimburse a trustee for the costs of prosecuting a motion demonstrating abuse of the Code when counsel’s filing is found to be “frivolous” rather than “not substantially justified.”<sup>19</sup>
- *Consumer credit information disclosure requirements.* Several amendments were adopted which would amend the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* Open-ended credit plan electronic solicitations would be required to be accompanied by information from the Federal

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<sup>11</sup> S.Amdt. 2661, id. at S14674 (daily edition Nov. 17, 1999).

<sup>12</sup> S.Amdt. 2522, id. at S14665 (daily edition Nov. 17, 1999).

<sup>13</sup> S.Amdt. 2528, id. at S14111 (daily edition Nov. 5, 1999).

<sup>14</sup> S.Amdt. 2664, id. at S14161.

<sup>15</sup> S.Amdt. 2759, id. at S14189.

<sup>16</sup> Id.

<sup>17</sup> S.Amdt. 2529, id. at S14608 (daily edition Nov. 16, 1999).

<sup>18</sup> S.Amdt. 2659, id. at S14679 (daily edition Nov. 17, 1999).

<sup>19</sup> S.Amdt. 2743, id. at S14170 (daily edition Nov. 5, 1999).

Trade Commission (FTC) about selecting and using credit cards.<sup>20</sup> Credit statements would require a “minimum payment warning” to advise customers about the financial consequences of making minimum payments under open-ended credit plans, with additional information being provided by the FTC, and regulatory implementation by the Board of Governors of the Federal Reserve System. Additional disclosures would be required for credit extensions secured by a dwelling, introductory rates, late payment deadlines and penalties, and Internet-based credit card solicitations.<sup>21</sup> An additional provision would prohibit specified retroactive finance charges during applicable grace periods.<sup>22</sup>

- *Criminal referrals for materially fraudulent bankruptcy schedules.* Bankruptcy courts would be directed to establish a procedure for the referral of a fraudulently filed statement in a bankruptcy schedule to a U.S. Attorney’s office or the FBI.<sup>23</sup> Section 204 of S. 625 currently contains a provision discouraging abusive and illegal reaffirmation practices by giving these designated authorities responsibility for specified enforcement activities.
- *Dismissal of bankruptcy filings by criminals and drug traffickers.* The court would be directed to dismiss a voluntary chapter 7 filing of specified criminals upon motion by a victim unless the debtor could establish that the filing is necessary to satisfy a domestic support obligation.<sup>24</sup>
- *Expanded student loan nondischargeability.* Educational loans as defined under § 221(e)(1) of the Internal Revenue Code would be added to those that are currently nondischargeable except upon proof of “undue hardship.”<sup>25</sup>
- *Definition of “family farmer.”* The jurisdictional debt limit for a chapter 12 “family farmer” would be raised.<sup>26</sup> Currently a family farmer is defined as an individual engaged in a farming operation whose debts do not exceed \$1,500,00, of which not less than 80 percent arises from the farming operation, and who derives more than 50 percent of income from farming. The debt limit would be raised to \$3,000,000, of which not less than 50 percent is farming-related.<sup>27</sup>

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<sup>20</sup> S.Amdt. 2530, id. at S14383 (daily edition, Nov. 9, 1999).

<sup>21</sup> S.Amdt. 2655, id. at S14671-74 (daily edition, Nov. 17, 1999)

<sup>22</sup> S.Amdt. 2768, id. at S14192 (daily edition Nov. 5, 1999).

<sup>23</sup> S.Amdt. 1714, id. at S11150 (daily edition Sept. 21, 1999).

<sup>24</sup> S.Amdt. 1715, id.

<sup>25</sup> S.Amdt. 1727, id. at S11152.

<sup>26</sup> Pursuant to P.L. 106-70 (Oct. 9, 1999), chapter 12 will expire on July 1, 2000.

<sup>27</sup> S.Amdt. 2746, id. at S14171 (daily edition Nov. 5, 1999). See also, S.Amdt. 2745, id. at (continued...)

- *Addition of “family fishermen” to chapter 12.* Chapter 12 would be amended to include family fishermen engaged in commercial fishing operations. A “family fisherman,” as defined, would be included under chapter 12, with an additional statutory provision that would treat specified liens on commercial fishing vessels as unsecured claims.<sup>28</sup>
- *Health care and employee benefits.* This amendment restores provisions in Title XI of S. 625 which existed prior to their omission at committee mark up. It amends the Code to address health care facility bankruptcies and includes provisions conferring administrative priority status on the costs of closing a facility, including disposal of patient records and transfer of patients to different facilities; and court appointment of a patient care ombudsman.<sup>29</sup>
- *Specified prepetition wages made an administrative expense.* Wages and benefits awarded as “back pay” as a result of a debtor’s violation of federal or state law are made administrative expenses regardless of when the unlawful act occurred or the services were rendered.<sup>30</sup>
- *Bankruptcy filing fees.* An amendment to 28 U.S.C. § 1930 to increase bankruptcy filing fees was accepted.<sup>31</sup> However, filing fees were recently increased pursuant to § 1000(a)(1) of the Consolidated Appropriations Act, P.L. 106-113 (Nov. 29, 1999).
- *In forma pauperis bankruptcy filings.* Directs the Judicial Conference to prescribe procedures for waiving chapter 7 filing and other fees for a debtor whose income is less than 125 percent of the income official poverty line as determined by the Office of Management and Budget.<sup>32</sup>
- *Extension of small business reorganization period of exclusivity to file a reorganization plan.* The bill is amended to permit small businesses in reorganization between 180 and 300 days of exclusivity to file a plan, rather than 90 days.<sup>33</sup>

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<sup>27</sup> (...continued)

S14170, which prohibits specified chapter 12 plan modification based upon an increase in the debtor’s disposable income.

<sup>28</sup> S.Amdt. 1726, id. at S14355 (daily edition Nov. 9, 1999). See also, S.Amdt. 2515, supra note 2.

<sup>29</sup> S.Amdt. 1730, id. at S14266 (daily edition Nov. 8, 1999).

<sup>30</sup> S.Amdt. 2665, id. at S14161 (daily edition Nov. 5, 1999).

<sup>31</sup> S.Amdt. 1695, id. at S14664 (daily edition Nov. 17, 1999). See also, S. Amdt. 2515, supra.

<sup>32</sup> S.Amdt. 1731, id. at S11162 (daily edition Sept. 21, 1999).

<sup>33</sup> S.Amdt. 1725, id. at S11151.

- *Jurisdiction over the trustee’s or debtor’s employment of professionals.* Amends 28 U.S.C. § 1334 to vest exclusive jurisdiction in federal district court over all causes of action or claims involving 11 U.S.C. § 327, which governs the trustee’s employment of professionals.<sup>34</sup>
- *Bankruptcy Tax Provisions.* The amendment substitutes current Title VII of S. 625 entitled “Bankruptcy Tax Provisions” with a revised subtitle of the same name.<sup>35</sup>
- *Trustee compensation.* Amends the Code to authorize trustee compensation in cases that have been dismissed, converted, or denied.<sup>36</sup>
- *Timing of trustee payments under chapter 13.* If a debtor makes payments into a chapter 13 plan that is not confirmed, the trustee must return to the debtor payments not previously paid to creditors “and not yet due and owing.”<sup>37</sup>
- *Political committees and election activity.* A political committee subject to the Federal Election Commission’s jurisdiction would not be permitted to file in bankruptcy.<sup>38</sup> Fines and penalties imposed under federal election law would be nondischargeable.<sup>39</sup>

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<sup>34</sup> S. Amdt. 2478, id. at S14608 (daily edition Nov. 16, 1999).

<sup>35</sup> S. Amdt. 2758, id. at S14383 (daily edition Nov. 9, 1999). See also, S. Amdt. 2514, id. at S14097 (daily edition Nov. 5, 1999)(automatic stay does not apply to creation or perfection of specified tax liens.)

<sup>36</sup> S. Amdt. 2520, id. at S14104 (daily edition Nov. 5, 1999). See also, S. Amdt. 2654., id. at S14157.

<sup>37</sup> S. Amdt. 1723, id. at S11151 (daily edition Sept. 21, 1999).

<sup>38</sup> S. Amdt. 2749, id. at S14171 (daily edition Nov. 5, 1999).

<sup>39</sup> S. Amdt. 2750, id.